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07 APR 1999

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In re Application of :
VAN DER EB et al. :
Application No.: 08/973,560 :
PCT No.: PCT/NL96/00239 : DECISION ON PETITION
Int. Filing Date: 13 June 1996 :
Priority Date: 13 June 1995 : UNDER 37 CFR 1.137(b)
Attorney Docket No.: INGE.006.00US :
For: p-53 BINDING PROTEIN CALLED Mdmx :
AND ENCODING SEQUENCES FOR SAID :
PROTEIN :

This is in response to applicants' petition to revive an unintentionally abandoned international application under 37 CFR 1.137(b) filed 06 April 1998 and the request for refund received 13 February 1998. The request for refund received 13 February 1998 is dismissed for the reasons discussed below. The petition to revive is granted.

BACKGROUND

Applicants were required to pay the basic national fee of \$930 by 15 December 1997 to avoid abandonment of this application.

On 05 December 1997, applicants filed a transmittal letter for entry into the national stage. The transmittal letter included an authorization to charge any required fees to Deposit Account No. 18-0020. However, when the Patent and Trademark Office attempted to charge the required fees to Deposit Account No. 18-0020 on 05 February 1998, there was no money in the deposit account.

On 12 February 1998, applicants filed a declaration in compliance with 37 CFR 1.497 and a small entity surcharge of \$65.

On 13 February 1998, with a certificate of mail date of 05 February 1998, applicants filed small entity statements and request for refund of half of the fees paid on 05 December 1997, or \$600.

On 24 March 1998, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment indicating that the application was abandoned for failure to pay the basic national fee within 30 months from the priority date. The Notification stated that the account was empty.

On 06 April 1998, applicants filed a petition to revive the application under 37 CFR 1.137(b). The petition is accompanied by authorization to charge \$1,245 (\$600 for the basic national fee and multiple dependent claim fee and \$645 for the petition to revive fee) and any required fees.

DISCUSSION

The instant application became abandoned on 16 December 1997 for failure to pay the basic national fee before the expiration of 30 months from the priority date.

Petition Under 37 CFR 1.137(b)

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply unless it has been previously submitted, (2) the fee set forth in 37 CFR 1.17(m), (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional" and (4) a terminal disclaimer, in an application filed before 08 June 1995.

With respect to item (1) above, the required reply, with a small entity statement, was payment of the basic national fee of \$465, which has been charged to counsel's deposit account number 18-0020, as authorized in the petition. As to item (2), the required small entity petition fee under 37 CFR 1.17(m) at the time this petition was filed was \$660. Accordingly, \$660 has been charged to deposit account number 18-0020. As to item (4), as the international application was filed after 08 June 1995, a terminal disclaimer is not required. As to item (3), the statement "[t]he abandonment was unintentional" is interpreted as a statement that the entire delay from 15 December 1997 when the basic national fee was due until the filing of this petition was unintentional. If this is an incorrect interpretation in view of the rules, applicants are required to submit a statement to that effect. Accordingly, the instant petition meets all of the requirements of 37 CFR 1.137(b).

Request for Refund

The request for refund received 13 February 1998 requests that half of the fees paid on 05 December 1998 be refunded to applicant under 37 CFR 1.28(a). This request is dismissed, as no payment of fees was made on 05 December 1998. As discussed above, when the Patent and Trademark Office attempted to charge the required fees to Deposit Account No. 18-0020 on 05 February 1998 in accordance with the authorization received 05 December 1997, there was no money in the deposit account. Accordingly, no fees were paid in this application until 12 February 1998, at which time a check for \$65 for the surcharge under 37 CFR 1.492(e) was received. It is noted that the small entity statements submitted on 13 February 1998 are sufficient to establish small entity status. As the only fees paid in this application are small entity fees, it would not be appropriate to grant any request for refund under 37 CFR 1.28(a). Applicants' request for refund is, therefore, dismissed.

Fee for corrected filing receipt

On 22 June 1998, applicants filed a request for a filing receipt and, in the event that a filing receipt had already been mailed to applicants at the correct correspondence address, a request for a duplicate filing receipt. The request included an authorization to charge counsel's deposit account \$25 for a duplicate filing receipt if a filing receipt had already been mailed. As a filing receipt had not yet been mailed, this \$25 fee was charged to the deposit account in error and has been refunded.

CONCLUSION

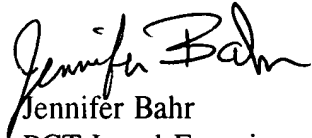
The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

Fees of \$465 for the basic national fee, \$135 for multiple dependent claims and \$660 for the petition to revive have been charged to deposit account number 18-0020, as discussed above. The fee of \$25 charged on 26 June 1998 for a request for a duplicate filing receipt was charged in error, as discussed above, and will be credited to deposit account number 18-0020.

The request for refund is dismissed.

Receipt of a request for permission to withdraw under 37 CFR 1.36 on 12 November 1998 is acknowledged. This request has been held in abeyance pending the decision on the petition to revive the application. It is noted, however, that the request to send all correspondence to Allen C. Turner has been treated as a change of correspondence address pending the decision on the request for withdrawal.

This application will be held in the PCT Legal Office for a decision on the request for permission to withdraw, which will be forthcoming.

A handwritten signature in cursive script, appearing to read "Jennifer Bahr".

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